S.B.CIVIL WRIT PETITION NO.4454/2004

Madan Lal Sharma
v.
State of Rajasthan & Ors.

DATE OF ORDER :: 24th April, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.S.Saluja, for the petitioner.
Mr. S.S.Ladrecha, Additional Government Advocate.

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The petitioner entered in the service of the Panchayat Samiti, Raipur being appointed as Hand Pump Mistri on 15.4.1988. On being retrenched from service w.e.f. 1.3.1994, he raised an industrial dispute, that came to be answered by the Labour Court, Bhilwara by an award dated 18.2.2003 holding retrenchment of the petitioner bad in eye of law, a direction, therefore, was given to reinstate him in service. A writ petition preferred by the employer giving challenge to the award dated 18.2.2003 also came to be rejected by this Court on 19.1.2004. After dismissal of the writ petition the petitioner submitted a joining report to the employer on 4.2.2004, however, an order to reinstate him in service was passed by Vikas Adhikari of the Panchayat Samiti, Raipur on 24.7.2004. After permitting the petitioner to join service the Vikas Adhikari, Panchayat Samiti, Raipur passed another order dated 4.10.2004 retrenching him from service as there was no need of a Hand Pump Mistri. Being aggrieved by the same this petition for writ is preferred.

While giving challenge to the order dated 4.10.2004 the contention of counsel for the petitioner is that as a matter of fact the Commissioner, Panchayati Raj Department Rajasthan, Jaipur by his communication dated 19.7.2004 (Anx.3) directed the Panchayat Samiti to terminate the workman from service and as such the powers of the employer were abdicated by the Commissioner, Panchayati Raj Department, therefore, the order retrenching the workman from service was without jurisdiction.

It is also contended by counsel for the petitioner that the Government of Rajasthan under an order dated 30.12.1995 instructed all Panchayat Samitis in State of Rajasthan to regularise services of all then existing Hand Pump Mistris, therefore, the petitioner being deemed to be in employment of Panchayat Samiti on 30.12.1995 was required to be considered for regularisation in accordance with the order referred above.

Per contra, in reply to the writ petition the stand of the employer is that the petitioner was not working on regular basis but was employed on contract, therefore, after following due process of law he was rightly discontinued from service.

In rejoinder to the reply, the petitioner placed few facts on record pertaining to appointment of certain other persons as Hand Pump Mistris subsequent to the petitioner and for their regularisation in service. The facts stated in rejoinder are not denied by the respondents.

Heard counsel for the parties.

The respondents in their reply have not denied the fact that a decision was taken by the State Government and was circulated under the order dated 30.12.1995 to regularise services of all existing Hand Pump Mistris working on contract basis. The petitioner though was retrenched from service on 1.3.1994 but in view of the award dated 18.2.2003 he was to be treated in service continuously. The case of the petitioner, therefore, was also required to be considered in light of the circular dated 30.12.1995. It is pertinent to note that as averred in rejoinder filed by the petitioner certain other persons viz. Nanuram Luhar, Laxmanlal Dholi, Kaluram Bhatt, Roshanlal Sharma and Babu Singh who were employed quite later to the petitioner as Hand Pump Mistris i.e. in the year 1990 stood regularised in service in light of the notification dated 30.9.1995. The termination of the petitioner from service without considering his candidature for the purpose of regularisation specially in the circumstances that the persons junior

to him already stood regularised by the respondents in service, is not only unjust and arbitrary but is also discriminatory, as such the order impugned dated 4.10.2004 passed by the Vikas Adhikari, Panchayat Samiti, Raipur is declared illegal and the same, therefore, deserves to be quashed.

No substance, I found in other argument of the petitioner that the Commissioner, Panchayati Raj abdicated powers of the employer as only an advisory instruction was given to discontinue the petitioner in accordance with law.

This petition for writ deserves acceptance on first count, thus, is allowed. The order impugned dated 19.7.2004 (Anx.3) is hereby quashed. The respondents are directed to reinstate the petitioner in service and further to consider his candidature for the purpose of regularisation in service in accordance with the notification dated 30.12.1995 passed by the Director-cum-Special Secretary to the Government of Rajasthan, Department of Rural Development and Panchayati Raj, Jaipur.

(GOVIND MATHUR),J.

Kkm/ps.